



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: BCS - 175313

PRELIMINARY RECITALS

Pursuant to a petition filed on June 30, 2016, under Wis. Stat. § 49.45(5)(a), to review a decision by the Eau Claire County Department of Human Services regarding Medical Assistance (MA), a hearing was held on August 16, 2016, at Eau Claire, Wisconsin.

The issue for determination is whether the petitioner is eligible for BadgerCare Plus continuation benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED]
Eau Claire County Department of Human Services
721 Oxford Avenue
PO Box 840
Eau Claire, WI 54702-0840

ADMINISTRATIVE LAW JUDGE:
Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Eau Claire County.

2. The petitioner began working at a new job in April 2016. This employment caused her income to increase from below to above the federal poverty level.
3. On April 19, 2016, the department requested that the petitioner provide proof of her income by April 28, 2016. She attempted but was unable to do so.
4. On June 7, 2016, the department notified the petitioner that she needed to pay her BadgerCare Plus premium by June 13, 2016, but also instructed her: “If we are waiting for other information from you, do not pay your premium at this time. We will send you a payment coupon with your premium amount and how to pay it when the only item we need to process your application is your premium.”
5. On June 14, 2016, the department notified the petitioner that as of June 1, 2016, she was not eligible for BadgerCare Plus because she did not pay her premium.
6. The department ended the petitioner’s BadgerCare Plus benefits on May 31, 2016.

DISCUSSION

Adults are eligible for BadgerCare Plus, Wisconsin’s medical assistance program for those who are not elderly or disabled, if their household income does not exceed the federal poverty level. Wis. Stat. § 49.471(4)(a); *BadgerCare Plus Handbook*, § 50.1.; *BadgerCare Plus Handbook*, § 50.1. But when a BadgerCare Plus household’s income increases from below the federal poverty level to above it, the department allows those already receiving benefits to remain eligible for another year under a BadgerCare Extension, regardless of their income. *BadgerCare Plus Eligibility Handbook*, § 18.1. Those receiving an extension must pay a premium when their income exceeds the federal poverty level. *BadgerCare Plus Handbook*, § 19.1. The department must provide a 10-day notice before assessing the first premium. *BadgerCare Plus Handbook*, § 19.2.

The petitioner was a BadgerCare Plus recipient who began working in April 2016, which caused her income to exceed the federal poverty level. An email to the county worker from the Help Desk dated August 11, 2016, indicated that the petitioner’s extension was denied because she did not verify her information on time. Although the file contains several notices, none of them give this reason for the denial. Instead, the June 14, 2016, notice to the petitioner indicated that BadgerCare Plus was being denied as of June 1, 2016, because she failed to pay a premium and her income exceeded the program’s limit. Federal regulations require that when an agency intends to take an adverse action in medical assistance matters that any notice of that action include the “reasons for the intended action” and the “specific regulations that support...the action.” 42 CFR § 435.919 referencing 42 CFR § 431.210(b) and (c). Because the department did not list lack of verification as a reason for denying the petitioner’s extension, it cannot base her denial on this.

Moreover, even if the department had properly notified the petitioner that it was denying her benefits because she failed to verify her income, it would not succeed. Medicaid applicants must verify relevant information within 30 days of their application date or within 10 days of when the information is requested, whichever is later. Wis. Admin. Code, § DHS 102.03(1) and (3); *Medicaid Eligibility Handbook*, § 20.7.1.1. The department can deny benefits only when the applicant or recipient is able to produce required verifications but refuses or fails to do so. Wis. Admin. Code, § DHS 102.03(1). Workers are instructed to find a person does not provide a required verification eligible if she “does not have the power to produce the verification and [she] is otherwise eligible.” *Medicaid Eligibility Handbook*, § 20.8.1. On April 19, 2016, the department requested the petitioner to provide proof of her income for the last 30 days by April 28, 2016. She was only able to provide a paycheck for one week because of difficulty obtaining the information from her employer. As soon as she could obtain all of the information, she provided it, which was before the department’s June 14, 2016, denial notice. The

department cannot deny her benefits for lack of verification because she established that she temporarily lacked the ability to do so.

The department also cannot deny her benefits on the ground that she has too much income because that does not matter for an extension.

This means that the department can only deny her extension if she failed to pay her premium. The *BadgerCare Plus Handbook*, § 19.10.2, instructs workers: “You must give a 10-day notice to the member when the group is required to pay a premium for the first time.” On June 7, 2016, the department notified the petitioner that she needed to pay her BadgerCare Plus premium by June 13, 2016, but also instructed her: “If we are waiting for other information from you, do not pay your premium at this time. We will send you a payment coupon with your premium amount and how to pay it when the only item we need to process your application is your premium.” The department never sent the petitioner a coupon before notifying her on June 14, 2016, that it was ending her benefits. Thus, it not only failed to give her the 10-day notice required by its own policy, but it ended her benefits for not paying a premium that its notice instructed her not to pay until she received a coupon, which it had not yet provided. There is no basis in the record for its denial of benefits.

Because the department does not deny that the petitioner meets the remaining criteria for a BadgerCare Plus extension, I will order it to reinstate her benefits back to June 1, 2016, and grant her an extension of those benefits until May 31, 2017.

CONCLUSIONS OF LAW

1. The department cannot deny a BadgerCare Plus extension to the petitioner on the ground that she failed to verify her income because it did not notify her that this was a reason for denying the extension and because she could not provide the requested verification within 10 days.
2. The department cannot deny a BadgerCare Plus extension to the petitioner on the ground that she did not pay a premium because it did not allow her 10 days to pay the premium and because her notice instructed her not to pay the premium until she received a coupon, which the department had not provided before denying her benefits.
3. The petitioner meets the requirements needed to receive a BadgerCare Plus extension.

THEREFORE, it is

ORDERED

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it reinstate the petitioner’s BadgerCare Plus benefits retroactive to June 1, 2016, and to continue those benefits through May 31, 2017, if she continues to meet the BadgerCare Plus Extension requirements.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 12th day of September, 2016

\s_____
Michael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 12, 2016.

Eau Claire County Department of Human Services
Division of Health Care Access and Accountability